



Comptroller General
of the United States

Washington, D.C. 20548

147006

Decision

Matter of: Dr. Robert J. Telepak

File: B-247681

Date: June 29, 1992

Dr. Robert J. Telepak, the protester, Herbert F. Kelley, Jr., Esq., and Bobby G. Henry, Jr., Esq., Department of the Army, for the agency. Daniel I. Gordon, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency properly canceled request for proposals after submission and evaluation of best and final offers where procuring activity reasonably determined that it no longer required the solicited services.

DECISION

Dr. Robert J. Telepak protests the cancellation of request for proposals (RFP) No. DADA10-91-R-0017, issued by the Health Services Command, Department of the Army, for academic radiologists for Brooke Army Medical Center (BAMC), Fort Sam Houston, Texas. Dr. Telepak contends that the RFP was canceled for improper reasons.

We deny the protest.

The RFP was issued on September 25, 1991, for three "urgently needed" academic radiologists to fill posts involving teaching as well as medical practice. The RFP covered a base period from February 1, 1992, through September 30, 1992, and had 4 option years. The RFP stated that BAMC sought academic radiologists with:

"any of the following subspecialty skills:

- (1) Mammography
- (2) Cardiovascular Radiology
- (3) Thoracic Radiology
- (4) Skeletal Radiology
- (5) Interventional Radiology
- (6) Imaging/MRI/CT
- (7) Pediatric

- (8) Ultrasound
- (9) General Diagnostic Radiology
- (10) Other Radiology Subspecialties"

At the time the RFP was issued, Dr. Telepak was on active duty serving as the Chief of BAMC's Radiology Department. Because he was about to retire and wished to compete for a contract as a civilian academic radiologist at BAMC, Dr. Telepak requested that he be recused from any involvement in the agency's procurement actions in this matter. There is nothing in the record which suggests that he had any involvement in the drafting of the RFP or in later steps of the procurement.

Two proposals, one of which was from Dr. Telepak, were received by November 1, 1991, the closing date. The evaluators reviewing the proposals concluded that Dr. Telepak's proposal was technically acceptable, but that the other proposal was not. A letter containing questions was sent to that second offeror, but no response was received. A request for best and final offers (BAFO) was sent to both offerors on December 20, 1991, with a January 6, 1992, closing date for BAFOs. Only Dr. Telepak submitted a BAFO. At that point, it appeared likely that a contract would soon be awarded to Dr. Telepak.

In late December 1991, Colonel (Dr.) Anna Chacko had been named as Telepak's successor as Chief of BAMC's Department of Radiology. Although she was not due to take up her new post until early March 1992, Dr. Chacko had numerous communications in late December 1991 and January 1992 with various people at BAMC and elsewhere about her new position. Among those communications were at least two conversations with the BAMC Commander during which, among other subjects, the need for the Radiology Department to save money was apparently discussed.

Dr. Chacko appears to have known that Dr. Telepak had submitted a proposal for a contract radiologist position at BAMC and, by mid-January (if not earlier), Dr. Chacko knew that Dr. Telepak was apparently in line for award. Dr. Chacko undertook a vigorous campaign in favor of cancellation of the RFP in general and against any award to Dr. Telepak in particular. There is substantial evidence in the record of sharp and long-standing animosity between the two doctors. In her efforts to prevent the award of a contract to Dr. Telepak, Dr. Chacko argued that it was improper for the outgoing head of the Radiology Department to become a contract radiologist and that Dr. Telepak's skills were not required at BAMC.

Because of the steps that Dr. Telepak had taken earlier to recuse himself from the procurement process, Dr. Chacko was unsuccessful in her efforts to persuade officials at BAMC that awarding a contract to Dr. Telepak would constitute a violation of statutes and regulations concerning procurement integrity. However, her argument that Dr. Telepak's particular mix of skills did not justify awarding him a contract was favorably received by the BAMC Commander. Dr. Chacko persuaded the Commander that, as the incoming Chief of the Radiology Department, she needed flexibility in planning how to reorganize the department and that awarding a contract to any civilian contractor in early 1992 would foreclose options to her. In late January 1992, Dr. Chacko wrote the Commander two letters explaining why, in her view, Dr. Telepak's particular radiology skills were duplicated by other personnel at BAMC and why she believed that particular specialty fields, such as musculoskeletal radiology, mammography, or interventional radiology, should be higher priorities than cardiovascular radiology, nuclear medicine, and the other fields of Dr. Telepak's experience. She also detailed in that letter the efforts she was planning which would allow the department to function without using contract radiologists.

The BAMC Commander adopted Dr. Chacko's view in a formal memorandum requesting the Health Services Command Contracting Office to cancel the RFP. The memorandum, dated January 31, 1992, repeated Dr. Chacko's statement that military personnel would be able to meet the Radiology Department's needs, so that no shortage justifying the expense of hiring a civilian contractor existed. The memorandum also stated that, after the new Chief of Radiology assumed her duties, a determination might be needed to contract for a specialist in mammography or musculoskeletal radiology. Nevertheless, the memorandum clearly indicated that the broad range of specialties covered by the RFP at issue in the protest exceeded the agency's needs.

In a negotiated procurement such as this one, the contracting activity has broad authority to decide whether to cancel a solicitation and need only establish a reasonable basis for the cancellation. Brackett Aircraft Radio Co., B-246282, Jan. 8, 1992, 92-1 CPD ¶ 43. Cancellation is appropriate when an agency determines that it no longer has a requirement for the items solicited. California Inflatables Co., Inc., B-241729, Feb. 6, 1991, 91-1 CPD ¶ 133. It is the responsibility of the contracting activity to determine its requirements, and our Office will defer to the activity's judgment in that regard. Research Analysis and Maintenance, Inc., B-236575, Dec. 12, 1989, 89-2 CPD ¶ 543. The fact that in this case the cancellation occurred after Dr. Telepak had been identified as the likely

awardee does not by itself evidence that the cancellation was improper; an agency may properly cancel a solicitation no matter when the information precipitating the cancellation arises, even if that is not until after proposals have been submitted and evaluated. See Admiral Towing and Barge Co., B-245600; B-245602, Jan. 16, 1992, 92-1 CPD ¶ 83.

The Commander's January 31, 1992, memorandum explicitly states that BAMC no longer had the need which warranted issuance of the RFP. That memorandum sets forth a reasoned basis for the conclusion that contracting for academic radiologists was not needed, other than in certain limited fields. In the course of a hearing held by our Office in this matter, the Commander confirmed that, 6 months after the decision to cancel was made, he remains certain that his decision was fully justified and that the department is functioning satisfactorily without contract radiologists.

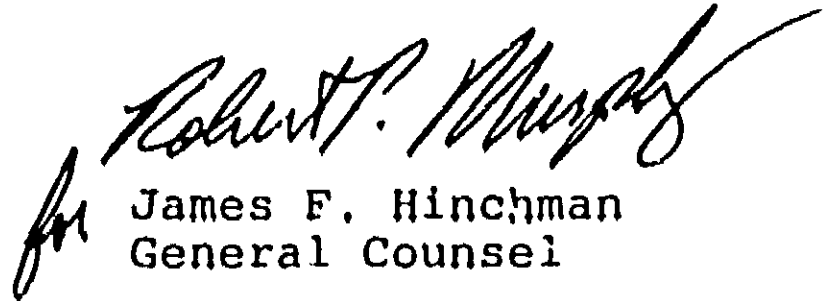
Although personal animus may have supplied at least part of the motivation for Dr. Chacko's efforts to have the RFP canceled, it was proper for the agency to cancel the RFP, notwithstanding that animus, if no need existed for the services covered by the RFP. The record contains evidence which supports the conclusion that the RFP requirements exceeded the agency's revised view of its needs. That revised view reflected, in part, increasing budgetary constraints. While there was admittedly a subjective element in the judgment concerning requirements for staff, it is not unreasonable for a new Chief of Radiology to have a different view of the Department's need for specialists in various areas from that of her predecessor.

Our conclusion is not changed by the fact that the change in the perceived need for contract radiologists occurred more because of a difference in perception than because of an increase in the number of military radiologists available (although Dr. Chacko apparently did succeed in obtaining the services of at least one additional military radiologist). A reassessment which suggests that a solicitation overstates the agency's needs may form a reasonable basis for canceling the solicitation, even when the only change that has occurred is the fact of a reassessment. See Research Analysis and Maintenance, Inc., supra. This is true even if the outlook is uncertain at the time of the reassessment, so that the agency cannot be sure, at the time of cancellation, whether the requirements will exist later. Source AV, Inc., B-241155, Jan. 25, 1991, 91-1 CPD ¶ 75.

In short, BAMC revised its assessment of its needs and reasonably concluded that the RFP at issue did not reflect the activity's needs. Because, in the activity's considered

judgment, the services covered by the RFP were no longer needed, it was proper for the agency to cancel the solicitation.

The protest is denied.


for James F. Hinchman
General Counsel

